

**PATTON BOGGS LLP**  
ATTORNEYS AT LAW

RECEIVED  
FEDERAL ELECTION COMMISSION  
2001 OCT 18 P 4:16

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6515  
www.pattonboggs.com

October 18, 2001

Kenneth P. Jones  
202-457-5239  
kjones@pattonboggs.com

**VIA HAND DELIVERY**

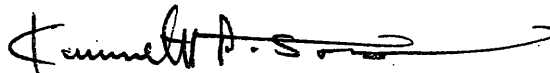
Xavier McDonnell, Esquire  
Attorney  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 4919  
Adrian Plesha

Dear Mr. McDonnell:

Please find enclosed the response of our client, Adrian Plesha, in response to the General Counsel's brief in the above-referenced matter. Please do not hesitate to call with any questions.

Respectfully submitted,



Benjamin L. Ginsberg  
Kenneth P. Jones

Enclosure

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

OCT 19 10 41 AM '01

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of  
Adrian Plesha

)  
)  
)

MUR 4919

REPLY BRIEF

I. Introduction

Despite an understandable aversion to the mailing and telephone calls sent out in the name of the fictitious "East Bay Democratic Committee", there cannot be a probable cause finding against Respondent Adrian Plesha ("Respondent") because: (1) the plain words of 2 U.S.C. § 441h, its legislative history and the precedents of the Federal Election Commission ("Commission") demonstrate that communications in the name of a non-existent entity are not covered by the statute and therefore cannot be applied here, and, (2) even if the Commission were to disregard the statute's plain words, the legislative history, its own precedents and the prohibition on its rulemaking through enforcement matters and apply 2 U.S.C. § 441h here, the factual record set forth in the Office of General Counsel's Brief ("OGC Brief") does not satisfy the probable cause standard for holding Respondent personally responsible for the campaign's actions.

For these reasons and those set forth below, the Commission should dismiss this matter and take no further action against this Respondent.

II. Facts

Respondent was employed as the manager of the 1998 congressional campaign of Charles Ball in California's 10<sup>th</sup> Congressional District. As the campaign manager, Respondent was responsible for the day to day operations of the campaign as well as hiring and managing staff and volunteers. The campaign was headquartered in Walnut Creek with a satellite office in Pleasanton. The headquarters building had several small offices with the Respondent's office and Mr. Ball's office connected through a mutual doorway. In addition to these offices, several workstations

located throughout the headquarters were used by various campaign staff and volunteers, and the headquarters generally maintained an "open-door" policy.

There were approximately five computers in use at the campaign headquarters, not enough for each staff member and volunteer to have his or her own. Computers were not specifically assigned to particular individuals and therefore various campaign staffers and volunteers routinely utilized the existing computers on an as-needed basis. Interior office doors remained unlocked so that computers located in these offices were freely accessible to all staff and volunteers at all times. It was not unusual for a campaign staff member or volunteer to use a computer located in an office that was not at his or her own work area.

The campaign staff included Heather Patterson, who served as the finance director, and Christian Marchant, who served as the deputy campaign manager. Ms. Patterson was chiefly responsible for fund-raising matters and Mr. Marchant assisted with general campaign matters including GOTV, list development, direct mail and phone banks. Ms. Patterson shared an office with Mr. Ball in the Walnut Creek headquarters.

Mr. Ball's opponent was incumbent Democratic Representative Ellen Tauscher, who won the 1998 election over Mr. Ball by a margin of 53 percent to 43 percent. Representative Tauscher won 47 percent of the vote in 1996 in winning the seat in her first race. In 2000, Representative Tauscher won 53 percent in gaining reelection.

At issue here are mailers and telephone calls disseminated just before election day in 1998 by a "fictitious organization called the East Bay Democratic Committee" that expressly advocated the defeat of Representative Tauscher. OGC Brief at 1. The OGC Brief describes the East Bay Democratic Committee as a "fictitious organization" and "a non-existent entity". OGC Brief at 1-3. The telephone calls and letters contained a similar message regarding Representative Tauscher's vote to expand the impeachment inquiry against President Clinton, a Democrat like Representative

Tauscher. There is no dispute concerning Representative Tauscher's vote on the impeachment inquiry nor any allegation that the communications inaccurately characterized her vote.

### III. The Law

Respondent is charged with violating is 2 U.S.C. § 441h, which states:

"No person who is a candidate for federal office or an employee or agent of such candidate shall -

- (1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting *for or on behalf of any other candidate or political party* or employee or agent thereof on a matter which is *damaging to such other candidate or political party or employee or agent thereof*:  
or
- (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)." (*emphasis supplied*).

The legislative history and the Commission's holdings in previous enforcement matters are consistent with the statute's plain meaning that 2 U.S.C. § 441h prohibits an individual who is a candidate for federal office (or his agent or employees) from fraudulently misrepresenting an existing candidate or committee or political party and causing damage to that existing candidate or committee or political party. While the Commission may reasonably consider it an oversight, neither the statute or the regulations cover this situation involving a non-existent or fictitious political party.

### IV. Legal Analysis

The actual words of 2 U.S.C. § 441h, its legislative history and the Commission's own decisions in previous enforcement matters construing it are consistent in demonstrating that the prohibitions of 2 U.S.C. § 441h do not apply to this situation. The elements of the statute that must be present to find a violation simply do not exist in this instance. If the Commission wishes to prosecute "fraudulent misrepresentation" by candidates and their agents/employees involving "non-existent," "fictional" committees then it must first gain the authority to do so either through a rulemaking procedure or by legislative changes to the statute. It is unlikely that this laudable goal

would garner any opposition. But the OGC Brief can cite no regulation for authority and the plain words of the statute show it does not apply here. Thus, 2 U.S.C. § 441h cannot be used to find a violation here.

Alternatively, even if the Commission wrongly finds that the statute does bar the activity here, there is not sufficient evidence in the record to find probable cause against the Respondent. If the Commission does find the mailing and telephone calls came from the Ball campaign, a fair reading of the evidence should convince the Commission that there are gaps and contradictions sufficient to prevent a finding of probable cause against this Respondent.

A. The Plain Words of the Statute, Its Legislative History and the Commission's Precedents Demonstrate that the Activity Here Is Not Covered by 2 U.S.C. § 441h's Prohibitions.

Even accepting the facts as the General Counsel's Brief recites them, which Respondent will demonstrate below is not the case, this matter should be dismissed because the statute does not cover communications in the name of a committee that does not exist. This statute was passed in the wake of the Watergate scandals to remedy false mailings against actual committees and candidates in the 1972 primaries, not fictional ones. Thus, the application attempted here in the General Counsel's Brief is not supported by the statute, the legislative history or the Commission's precedents. No regulations on "non-existent" committees have ever been promulgated by the Commission, and none are cited in the OGC's Brief.

1. 2 U.S.C. § 441h

The plain meaning of section 441h's words demonstrate that it does not cover a mailing by a non-existent political committee and does not apply in this case. The relevant portion of the statute holds that a federal candidate, and those working for the campaign, may not:

(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee agent thereof...

Thus, in order for section 441h to apply, the activity at issue must be a fraudulent misrepresentation made (1) on behalf of a candidate or political party that (2) damages that candidate or political party.

The Act defines a candidate as "an individual who seeks nomination for election, or election, to federal office." See 11 C.F.R. § 100.3(a). The Act defines a political party as "an association, committee, or organization which nominates or selects a candidate for election to any federal office, whose name appears on an election ballot as the candidate of the association, committee, or organization." See 11 C.F.R. § 100.15. The "East Bay Democratic Committee" is neither.

The OGC Brief states that communications at issue were done on behalf of a "fictitious organization" called the East Bay Democratic Committee. OGC Brief at 1. The East Bay Democratic Committee is not political party under either the Act or California law. Therefore, the mailing and phone calls at issue, which the General Counsel's Brief admits is done in the name of a "non-existent entity", OGC Brief at 3, cannot fall under the prohibitions of section 441h which applies to the candidate or party committee in whose name the fraudulent misrepresentation is made. The East Bay Democratic Committee has never existed, and therefore, is incapable of being damaged.<sup>1</sup> Thus, the mailing and phone calls in its name cannot fall under this statute.

In addition, the charge fails because, even if section 441h did contemplate activities against non-existent committees (which it does not), the activities at issue must be "damaging to such other

---

<sup>1</sup> The mailing was signed by "George Miller", who the General Counsel's Brief suggests is a member of Congress. While there is a George Miller who is a Member of Congress from the Bay Area, this mailing does not identify the George Miller who signed the letter as a member of Congress and there are 36 George Miller's in the phone book for the area covering the 10<sup>th</sup> Congressional District. The mailing did not discuss George Miller and did not go into a congressional

candidate or political party or employee or agent thereof.”<sup>2</sup> Yet since the East Bay Democratic Committee is a “fictitious organization”, indeed a “non-existent entity”, it cannot be damaged since there was nothing to damage. Indeed, the General Counsel’s Brief offers no evidence of damages, since none exist.<sup>3</sup> Without a showing of damages to the East By Democratic Committee, there cannot be a violation of this statute.

## 2. Legislative History

The portion of the Act that is now the section 441h upon which the General Counsel’s Brief relies was adopted in 1974 to prevent a specific abuse that had come to light during the Watergate scandals. Cong. Rec. S.5845, April 11, 1974. That specific abuse involved agents of the Nixon campaign, concerned about the strength of Senator Edmund Muskie as a potential 1972 opponent, who undermined Muskie’s campaign by sending out false memos on Muskie campaign stationery.

See, Watergate and President Nixon’s Grab for Power, URL <http://www.vcepolitics.com/watergate>.

Preventing the fraudulent use of the stationery and name of an opponent’s committee is the purpose of section 441h. The legislative history confirms that section 441h prohibits actions against existing committees – not communications by non-existent groups.

---

district other than the Tenth. There is no allegation in the OGC Brief that Representative Miller was damaged in any way, and in fact he received 77 percent of the vote in the 1998 election (up from 72 percent in 1996).

<sup>2</sup> Reliance on Federal Election Commission v. Furgatch, 869 F.2d 1256 (9<sup>th</sup> Cir. 1989) to prove the required damage element is not valid. In addition to presenting a readily distinguishable set of facts, implicit in the Furgatch court’s ruling was that public harm can be presumed only after it has been determined that a violation of the Act actually occurred. Id. The Furgatch Court grounded its findings on the assumption that a violation of the Act had already occurred and therefore, in the absence of being able to prove an element of public harm, harm was presumed. Furgatch at 1258-60. Here, there has been no determination on the merits, and therefore, this case cannot be used for the proposition cited in the OGC’s Brief. In other words, even if the General Counsel’s reading of Furgatch is valid, which it is not, Furgatch cannot be used as a substitute for the finding of a violation and Furgatch cannot be used as a substitute for the plain words of the statute.

<sup>3</sup> Given the plain words of the statute, damages to Representative Tauscher are not at issue. But even that examination would demonstrate that no violation occurred. In 1996, Representative Tauscher received 47 percent of the general election vote. In the 1998 election at issue here she received 53 percent of the vote. And in the 2000 election – in which there was no “damaging” mailing or phone calls – she received the same 53 percent of the vote. Furthermore, polling data taken on October 14<sup>th</sup> and 15<sup>th</sup> and subsequently on October 26, 1998 demonstrate that Representative Tauscher’s favorability rating actually increased from 42 percent to 51 percent after the communications at issue, and her final general election percentage was 53 percent. See attached Exhibit E. Therefore, even if the Commission (incorrectly) looks to Representative Tauscher there are no damages present so the statutory requirement is not met.

Senator Bayh, the sponsor of the amendment that is now 2 U.S.C. 441h, stated; [t]he purpose of the amendment ... is to direct the Senate's attention in the context of the pending bill ... *to a particular and specific problem* which would appear to require a statutory remedy. This is the problem of 'dirty tricks'... It has come to the Senate's attention through the hearings conducted by [Senator Ervin of North Carolina] that during the 1972 campaign there occurred at least two incidents in which an employee or agent of the Committee to Re-Elect the President distributed documents *bearing the letterhead of Senator Muskie's campaign* which falsely accused Senators Humphrey and Jackson of the most bizarre type of personal conduct. *It is this type of activity with which my amendment is designed to deal.*" Cong. Rec. S. 5845 (April 11, 1974) (*emphasis supplied*).

Senator Bayh further stated that his provision was designed to punish in the situation "where not only does the candidate or his agent know that the statements about another candidate are false but that they are, in fact, damaging to him." He adds: "I believe that the amendment will effectively deal with *the specific campaign abuses which have been brought to our attention* because of the 1972 campaign, without posing the difficult problems that a broader criminal libel statute presents in terms of first amendment guarantees." *Id.*

The legislative history makes clear that section 441h applies to a "particular and specific problem" -- fraudulent communications made in the name of an existing campaign or party organization that damage those campaigns or party committees. That is not the case here. No matter how "wrong" the mailing and telephone calls described by the OGC Brief may be, that does not mean as a matter of law that they violate the Act or regulations. But 2 U.S.C. § 441h simply does not apply to these facts, and the activity at issue here cannot be deemed a violation under this section or any other section of the Act and regulations as they currently exist.



### 3. Commission Precedents

Consistent with the plain wording of the statute and its legislative history, the Commission has never before applied section 441h as the General Counsel now urges. Indeed, prior Matters Under Review have limited their findings to situations involving mailings undertaken in the name of existing committees or candidates.

In MUR 1451 (1982), the Commission recognized that “it is clear that the statute requires not only fraudulent misrepresentation of authority, but that the fraudulent misrepresentation be ‘damaging’ to the misrepresented party.” See MUR 1451, First General Counsel’s Report at 11 (1982). It also recognized in MUR 1451 that “[u]nder 2 U.S.C. § 441h, the truth or falsity of the statement made is not relevant; the issue is whether there has been a misrepresentation of authority to speak on another party’s behalf.” *Id.* Accordingly, MUR 1451’s finding refutes the OGC recommendation here since there cannot be damage to the “misrepresented” party given that that party is “non-existent”. Moreover, because there cannot be misrepresentation of the authority of an entity that does not exist, there also cannot be a violation of the Act. The basic elements of 2 U.S.C. § 441h are not met.

Also undercutting the OGC’s arguments here is the Legal Analysis concerning the scope of section 441h in MUR 178A (1976), which states: “2 U.S.C. § 441h applies to a candidate or his agent misrepresenting himself or his committee as speaking *on behalf of another candidate in a manner damaging to such other candidates.*” (*emphasis supplied*). The conclusion reached in that MUR is equally applicable here: “On the facts supplied, use of this endorsement would not be within the reach of the statute.” *Id.*

MUR 1711 (1985) also uses a reading of section 441h consistent with Respondent’s position in this matter. The General Counsel’s Report at 5-6 holds: “2 U.S.C. § 441h states that no person who is a candidate for Federal office or an employee or agent of such candidate shall fraudulently

misrepresent that the candidate or his committee is speaking, writing or otherwise *acting for or on behalf of another candidate* on a matter which is damaging to such other candidate.” (*emphasis supplied*). Thus, the OGC’s Brief in this MUR attempts to stretch section 441h where the Commission has heretofore consistently acknowledged it does not go. See also MUR 743, MUR 774.

In MUR 3536, the Commission properly noted that the statute’s prohibition could apply “only to another federal candidate or employee or agent of such candidate. It would not apply to persons or organizations who are not federal candidates or employees or agents of such candidates and thus acting independently of any federal candidate.” First General Counsel’s Report at 5 (1992). For the Commission to be consistent, this reading must be given to the portion of section 441h(1) which states that the statements must be “damaging to such *other candidate or political party or employee or agent thereof*.” (*emphasis supplied*). Thus, the plain words of the statute are meant to protect the candidate or political party in whose name the false communication is made. Since the East Bay Democratic Committee is a “fictitious” and “non-existent” entity, it has not been damaged and, therefore, the Commission’s precedents also hold that 2 U.S.C. § 441h cannot be applied to the activities at issue here.

**B. The Commission Cannot Use an Enforcement Matter in Place of a Rulemaking to Expand A Statute.**

As the precedents make clear, the Commission has never before read the plain words of 2 U.S.C. § 441h as the OGC Brief urges here. It is important to note that the Commission has not issued regulations in this area, and the OGC Brief cites no regulation. Respondent could not have been able to receive with ascertainable certainty the standard with which the Commission expected him (or the Ball campaign) to conform. Accordingly, to adopt the position of the OGC Brief would be to use an enforcement action to announce new policy, a technique that has been ruled impermissible by the courts. *General Elec. Co. v. U.S. E.P.A.*, 53 F.3d 1324, 1329-30 (D.C. Cir.

1995).

The simple fact is that nothing in the Act or regulations covers a communication in the name of a “fictitious” or “non-existent” candidate or party committee. Rather, the statute covers communications falsely made in the name of an actual candidate or political committee. If the Commission believes such activities should not be permissible, it is certainly free to enter into the rulemaking process. But it cannot use an enforcement action such as this one to introduce a new reading of the law. *General Electric Co. v. U.S. E.P.A.*, 53 F.2d at 1329-30.

The OGC Brief here seeks a probable cause finding against the Respondent that does not fit within any application of the section 441h framework that could have possibly been derived from a plain reading of the statute. As the court in *General Electric* correctly stated: “[U]sing an enforcement [action] or citation as the initial means for announcing a particular interpretation may bear on the adequacy of notice to the regulated parties.” *Id.* (*internal quotations and citations omitted*). As clearly demonstrated by Commission precedents, this enforcement action is the “initial means” by which the General Counsel is attempting to change the meaning and expand the scope of 2 U.S.C. § 441h.

C. **Even if 2 U.S.C. § 441h is Incorrectly Found to Apply to This Case, There is Insufficient Evidence To Hold Respondent Responsible.**

The evidence presented in the General Counsel’s Brief that the Respondent “spearheaded” the East Bay Democratic Committee activities is flawed and contains numerous gaps over which the OGC leaps in an attempt to find someone – anyone – culpable. At the end of the day, a fair review of the evidence presented shows that it is unfair and inaccurate to blame any one individual for the activity at issue (which Respondents contend is not now covered by the Act or regulations).

The General Counsel's Brief against the Respondent relies primarily on affidavits from two campaign employees and on documents and information found on a computer belonging to the campaign that the OGC Brief alleges was the Respondent's. This reliance is misplaced.

1. The Patterson and Marchant Affidavits.

The personal relationships between the Respondent, who acted as campaign manager, and Ms. Patterson and Mr. Marchant soured, for different reasons, over the course of the campaign. This must be taken into account when judging the credibility of their affidavits.

The OGC Brief states, accurately, that the Respondent worked closely with Ms. Patterson, the Campaign's finance director and that they ate lunch together frequently. OGC Brief at 6-7. It is true that, for a time during the campaign, they spent much time together. The OGC Brief also states that during one of these luncheons, the Respondent communicated to Ms. Patterson his plan to send the fictitious mailing. Id. Respondent has denied this conversation ever took place, and there is no corroborating evidence that such a conversation ever occurred. The General Counsel's Brief, no doubt unintentionally, undercuts Ms. Patterson's credibility in the same paragraph by alleging that at least one week later, the Respondent "abruptly ordered [Ms. Patterson] out of [his] office" after she gazed at the Respondent's computer. OGC Brief at 7. The OGC Brief makes much of Ms. Patterson's observation that the Respondent had never previously acted in this manner. Id. But this contradicts the OGC's thesis because *if* the Respondent had already communicated his plan for the mailing to Ms. Patterson, there would be no reason to order Ms. Patterson out of the office. This inconsistency casts doubt upon Ms. Patterson's entire account.

Candidate Charles Ball's deposition bolsters Respondent's position, although this exculpatory evidence is not in the OGC Brief. According to that deposition, the Respondent and Mr. Ball shared a common office entryway and Mr. Ball never heard the Respondent order Ms. Patterson out of his office. See Ball Deposition at 210 – 213. Specifically, Mr. Ball was asked:

"According to what we were told, you were sitting at your desk and she [Ms. Patterson] walked into Adrian's office and he ordered her out. You have no memory of that?" Mr. Ball responded: "No."

Christian Marchant stated in his affidavit that he believed he was an "equal partner" with the Respondent in the campaign. The Respondent, who was the campaign manager, did not share that understanding and the relationship deteriorated over the course of the campaign. Mr. Marchant's affidavit must be viewed as that of a disgruntled employee, and weighed accordingly by the Commission.

For example, the OGC Brief states that the Respondent discussed the mailing at issue with Mr. Marchant in early October of 1998 and cites this as evidence of Respondent's violation of 2 U.S.C. § 441(h). OGC Brief at 7. However, in the same paragraph, the General Counsel's Brief makes a telling admission that undercuts its use of Mr. Marchant's statement. Specifically, while allegedly discussing the plan to send the mailing, the OGC's Brief at 7 states: "Mr. Marchant state[d] that...Plesha said that 'he has a few tricks up his sleeve.' When questioned further, Plesha refused to provide additional information."

Respondent denies ever making such a statement. But even if Mr. Marchant's account is true, it offers nothing towards proving that the Respondent discussed the activity at issue. In fact, such a statement (if true), proves exactly the opposite of the General Counsel's contention because it clearly states that the Respondent provided no "additional information." OGC Brief at 7. Indeed, the "tricks" is so undefined as to provide no probative evidence, and actually referred to the need to communicate with Republican voters since Ms. Tauscher was shown in polls as getting as much as 30 percent of the Republican vote in the district.

2. Numerous Individuals Had Access to the Ball Campaign's Computers.

The OGC Brief maintains that the "most powerful evidence" of the Respondent's involvement came from the "Ball campaign's computer." But the OGC Brief fails to disclose the

wide access others in the campaign had to the computer and the broken chain of custody for that computer. The facts contradict the thesis of the OGC Brief. The OGC Brief incorrectly states that the computer was "assigned" to the Respondent. Computers utilized during the Ball Campaign were not specifically assigned and were available for use by all campaign staff whenever the need arose. Although the computer at issue, *see* OGC Brief at 7, was physically located in the Respondent's office, that office was unlocked and the computer was used by many individuals, including Ms. Patterson and Mr. Marchant.

The General Counsel also fails to address the chain of custody regarding their "most powerful evidence." According to the deposition of Charles Ball, the computer referenced in the OGC's Brief changed hands several times in the days and weeks immediately preceding and after the end of the campaign. In fact, there appear to be periods of time when the computer is completely unaccounted for. Specifically, Mr. Ball stated that the computer was in the custody of at least two or three other individuals prior to its being sent to the Commission (including several family friends and his babysitter). *See* Ball Deposition pp. 225-35.

3. The Computer's Hard Drive Lists Other Individuals as the Author of the Documents Cited in the OGC Brief.

Ignored by the General Counsel's Brief is the most fundamental evidence – whose name appears on the computer screens for the documents the OGC Brief claims link the Respondent to the mailings and phone banks. For example, the directory screen lists as author of the phone bank script – highly touted as evidence in the OGC Brief – not the Respondent, but rather "Jody." Yet the General Counsel's Brief does not even bring up – let alone explain – this piece of evidence that contradicts its conclusion. *See* attached Exhibit A.

Similarly, a later directory screen does not include the Respondent's name, but shows that the script document was last saved at 12:45 a.m. by "Charles Ball". Again, there is no explanation in

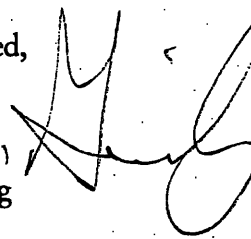
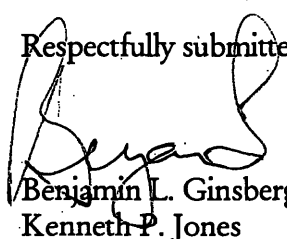
the General Counsel's Brief. See attached Exhibit B. Accordingly, the General Counsel's brief has provided no direct evidence that the Respondent authored the phone script or the mailing that is the subject of this enforcement action.

Additionally, the affidavit of Ireland Direct Mail owner, Gregory Hollman, does not mention the name of the Respondent even once. See Hollman affidavit, Jan. 8, 2001. There is no direct evidence of any connection between the Respondent and the mail house that allegedly sent out the mailing at issue. As demonstrated by the Ireland Direct Mail invoice, (OGC Brief at 9) the Respondent's name is not listed. See attached Exhibit C. Furthermore, throughout the campaign, invoices for various direct mail pieces were directed not only to the Respondent, but also to Ms. Patterson and Mr. Marchant. See attached Exhibit D. The General Counsel's brief fails to recognize that other campaign staff took an active part in the direct mail activities of the Ball campaign and this oversight casts further doubt onto the proposed finding against the Respondent.

V. CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that the Commission not find probable cause against Respondent in this matter because there was no violation of 2 U.S.C. § 441h according to a fair reading of its plain language, its legislative history and the Commission's own precedents. Even if section 441h is misapplied to cover this situation, there is not substantial evidence in the OGC Brief for a probable cause violation against this Respondent.

Respectfully submitted,



Benjamin L. Ginsberg  
Kenneth P. Jones

PATTON BOGGS LLP  
2550 M Street, NW  
Washington, DC 20037  
202-457-6000

MUR 4919

# EXHIBIT

# A



**DICA-BALLGOTV Properties** ? x

**General** **Summary** **Statistics** **Contents** **Custom**

**Title:**

**Subject:**

**Author:**

**Manager:**

**Company:**

**Category:**

**Keywords:**

**Comments:**

**Hyperlink base:**

**Template:** DICA-BALLGOTV

☐ Save preview picture

MUR 4919

# EXHIBIT

B

DICA-BALLGOTV Properties

1/2

General | Summary | Statistics | Contents | Custom

Created: Saturday, October 31, 1998 12:45:00 AM

Modified: Saturday, October 31, 1998 12:45:16 AM

Accessed: Tuesday, January 30, 2001

Printed: Saturday, October 31, 1998 12:44:00 AM

Last saved by: Charles Ball

Revision number: 2

Total editing time: 6 Minutes

Statistics:

Statistic name	Value
Pages:	1
Paragraphs:	2
Lines:	10
Words:	76
Characters:	382
Characters (with space...	457

OK

Cancel

MUR 4919

EXHIBIT

C

SEP-13-01 16:43

P.26

R-099

Job-254

SEP-13-2001 17:10

OGC

P.26/45

INVOICE

CUSTOMER NO 9453

INVOICE NO 353794

300 N. JET LANE WALNUT CREEK, CA 94596

BILL TO

SHIP TO

STEVENS PRINTING  
2489 ESTRAND WAY  
PLEASANT HILL, CA 94523-3911

UNITED STATES POSTAL SERVICE  
WALNUT CREEK  
PERMIT #508  
WALNUT CREEK, CA 94596

Verbal

ORDER DATE  
10/30/99F.O.B.  
IRELANDSHIP VIA  
IDM TRUCK

12/31/98

TERMS  
NET 10 DAYSSALESPERSON  
GHOUR ORDER NUMBER  
812003

DESCRIPTION

UNIT PRICE

EXTENDED PRICE

CHARLES BALL POLITICAL MAILING OCTOBER  
1, 1998

40000	DATA CONVERSION FROM DISKETTE, IMPORT DATA, CASS CERTIFY AND ADD CARRIER ROUTE NUMBER	\$0.00540	\$216.0
40000	AFFIX POSTAGE, LIVE STAMPS BY HAND	\$0.03500	\$1400.0
40000	INSERT 1PC INTO #10 ENVELOPE	\$0.01950	\$780.0
40000	INK JET ADDRESSING, RESIDENT LABELS, PRESORT TO USPS 3RD CLASS CRRT AND 3/5 SPECIFICATION, TIE AND SACK	\$0.03240	\$1296.0

Total Amount \$3,692.0

MUR 4919

# EXHIBIT

D

SEP-13-01 16:43  
SEP-13-2001 17:13

IGC

P.41 R-099 Job-254

P.41/45



# INVOICE

INVOICE NUMBER 981471-01  
JOB NUMBER 981471  
FILE NUMBER  
INVOICE DATE 10-30-98  
SHIPPING DATE 10-30-98

2489 ESTAND WAY  
PLEASANT HILL, CA  
94523  
(510) 681-1774  
FAX (510) 681-1724

**STEVEN'S  
PRINTING**


TO:

B140  
ATT: ACCOUNTS PAYABLE  
CHARLES BALL FOR CONGRESS  
1281-A BOULEVARD WAY  
WALNUT CREEK CA 94595

SHIP TO:

B140  
HEATHER PATTERSON  
CHARLES BALL FOR CONGRESS  
1281-A BOULEVARD WAY  
WALNUT CREEK CA 94595

WE NOW ACCEPT MASTERCARD, AMERICAN EXPRESS, VISA & DISCOVER.

PURCHASE ORDER NUMBER		SALESPERSON	SHIP VIA	TAX EXEMPT NUMBER
QUANTITY ORDERED	QTY SHIPPED	DESCRIPTION		AMOUNT
3,000	3,000	MART BOND INVITATIONS, RSVP CARDS, INVITE EPS AND RSVP EPS.		850.00
		SUBTOTAL		850.00
		SALES TAX		70.13
<div><p>PAID 11/4/98 CHECK # 1565 \$15,722.13</p></div>				

NET 30 DAYS

INVOICE TOTAL

920.13

SEP-13-01 16:43

SEP-13-2001 17:12

TGC

P.37

R-099

Job-254

P.37/45

**INVOICE**

INVOICE NUMBER

981339-01

JOB NUMBER

981339

FILE NUMBER

INVOICE DATE

10-27-98

SHIPPING DATE

10-27-98

2489 ESTAND WAY  
PLEASANT HILL, CA  
94523  
(510) 681-1774  
FAX (510) 681-1724



TO:

B140  
ATT: ACCOUNTS PAYABLE  
CHARLES BALL FOR CONGRESS  
1281-A BOULEVARD WAY  
WALNUT CREEK CA 94595

SHIP TO:

B140  
CHRISTIAN  
CHARLES BALL FOR CONGRESS  
1281-A BOULEVARD WAY  
WALNUT CREEK CA 94595

WE NOW ACCEPT MASTERCARD, AMERICAN EXPRESS, VISA &amp; DISCOVER.

PURCHASE ORDER NUMBER		SALESPERSON	SHIP VIA	TAX EXEMPT NUMBER
			TRUCK	
QUANTITY ORDERED	QUANTITY SHIPPED	DESCRIPTION		AMOUNT
10,000	10,000	LAWRENCE LAB LETTERS 270 2 LETTERS #10 ENVELOPE MAIL MERGE LETTER, FOLD, INCL UDE 2ND PG & BROCHURE 3 PANEL MAIL PIECES MAIL PREP		1,436.00 3,060.00
		SUBTOTAL		4,496.00

RMS: NET 30 DAYS

**INVOICE TOTAL**

4,496.00



MUR 4919

# EXHIBIT

E

**California's 10<sup>th</sup> CD TRACK Survey**  
**INTERVIEW SCHEDULE**

**CHARLES BALL FOR CONGRESS**  
***Public Opinion Strategies***  
**Alexandria, Virginia**

October 27, 1998  
N=300 Likely Voters  
Margin of Error:  $\pm 5.66$

---

5. If the election for U.S. Congress were being held today, for whom would you vote if the candidates were... (READ AND ROTATE)

\_\_\_ Ellen Tauscher (TOWL-scher) (*like cow*), Democrat, Member of Congress

\_\_\_ Charles Ball, Republican, National Security Analyst

\_\_\_ Valerie Janlois (JAN-LOIS), Natural Law Party, Non-profit Organization Administrator

\_\_\_ ...OR...

\_\_\_ John Place, Reform Party, Businessman

<u>Oct. 26</u>	<u>Oct. 14-15</u>	<u>June '98</u>	
35%	27%	25%	DEFINITELY TAUSCHER
16%	15%	22%	PROBABLY TAUSCHER
24%	26%	12%	DEFINITELY BALL
7%	7%	13%	PROBABLY BALL
1%	1%	1%	DEFINITELY JANLOIS
2%	1%	2%	PROBABLY JANLOIS
1%	1%	1%	DEFINITELY PLACE
1%	1%	1%	PROBABLY PLACE
12%	19%	17%	UNDECIDED (DO NOT READ)
1%	2%	5%	REFUSED (DO NOT READ)
51%	42%	47%	TOTAL TAUSCHER
31%	33%	25%	TOTAL BALL
3%	2%	3%	TOTAL JANLOIS
2%	2%	2%	TOTAL PLACE
12%	19%	17%	TOTAL UNDECIDED

\* TOTAL numbers may differ due to rounding